IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1030 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH GOVINDBHAI

Versus

STATE OF GUJARAT

Appearance:
MR KR RAWAL for Appellant
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 20/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellant came to be convicted by the Additional Sessions Judge, Bhavnagar for an offence punishable under Section 302 of the I.P.C. and he was sentenced to undergo imprisonment for life by virtue of a judgment and order rendered in Sessions Case No.8 of 1989 on July 17, 1993. Aggrieved by the said judgment and order, the present appeal is preferred.

2. The facts of the case can be narrated thus:

2.1 The present appellant was married to Hansaben. They were staying in a house situated in Harijan Vas of Bhavnagar. A few houses away, the mother of Hansaben, Alooben Karsanbhai was staying with her son Ramesh. On 16th August, 1988, the appellant went to the house of his in-laws alongwith the deceased in the morning at about 8 o'clock. Thereafter, both he and his wife went back. The appellant again went to the house of Alooben at about 11 o'clock but alone. On inquiry, he informed that he has sent Hansaben to Ghogha. Thereafter, he took his meals, rested for a while and left the house at about 1.30 p.m. informing that he is going to Ghogha and will not come for meals in the evening. Next morning, Alooben went to the house of the appellant to inquire as to whether Hansaben has returned. She noticed from the window that a foul smell was coming from the house. She, therefore, went to her brother Harjibhai. Harjibhai lifted the curtain from the window but could not see anything. Thereafter, they saw with the help of a torch to find that Hansaben's dead body was lying there. They, therefore, rushed to the police chowki and gave the information. On the basis of the information, FIR was registered by Bhavnagar 'B' Division Police Station and an offence was registered. The police went to the house of the appellant which was locked from outside. The door was broken open and it was found that Hansaben's dead body was lying. The dead body was degenerated. It was sent for post-mortem examination and it was found that she died due to throttling. The police investigated further and collected evidence and having found sufficient evidence against the accused appellant, filed a chargesheet in the Court of Chief Judicial Magistrate, Bhavnagar. The Chief Judicial Magistrate, after following the procedure committed the case to the Court of Sessions at Bhavnagar and the case came to be registered as Sessions case No.8 of 1989.

2.2 Charge was framed against the accused at Exh.3 for having committed murder of his wife Hansaben by throttling, an offence punishable under Section 302 of

the I.P.C. The accused pleaded not guilty to the charge and claimed to be tried.

2.3 The learned Additional Sessions Judge, considering the evidence led by the prosecution, came to the conclusion that the prosecution was successful in establishing the charge against the accused appellant and, therefore, while rendering the judgment and order impugned herein, recorded his conviction and sentenced him to life imprisonment.

3. Learned advocate Mr. K.R. Rawal appearing for the appellant submitted that the present case is based on circumstantial evidence. He submitted that as per established principles of law, the prosecution has to establish a complete chain of circumstances to link the accused with the offence and even if one of the links is missing, the benefit must go to the accused appellant. He submitted that in the instant case, the complete chain of circumstances is not established. The Trial Court has committed an error in not considering this aspect and has convicted the appellant and therefore, the appeal deserves to be accepted.

3.1 To substantiate his submission, Mr. Rawal submitted that the house wherein the incident occurred is surrounded by other houses and is only the 4th house from the house of the complainant, mother of the deceased. The prosecution has not examined any independent witness to indicate the occurrence. If the deceased was throttled by the appellant, there would have been some noise, some uproar which could have been established through the neighbours. Non-examination of the neighbours, therefore, would have a direct impact on the acceptability of the evidence of the prosecution.

3.2 Mr. Rawal submitted that there is evidence to indicate that the accused had cordial relations with the deceased. The marriage had taken place only a year back. The deceased was running 5th month of pregnancy and he had no reason, therefore, to commit the murder. These aspects are not considered by the Trial Court.

3.3 It is contended that there is no evidence as to wherefrom the appellant was arrested. The recovery of key to the house from the appellant is doubtful. The evidence that the key was applicable to the lock of the house is doubtful for the reason that there is evidence to indicate that the lock was broken open. If the lock was broken, there is no question of the key being applied to it after it is recovered from the accused appellant.

Mr. Rawal, therefore, submitted that the appeal may be allowed and the judgment and order impugned herein may be quashed and set aside.

4. Mr. Jani, learned Additional PP appears for the respondent State. According to Mr. Jani, the complete chain is established by the prosecution. The conduct of the appellant reflects heavily on his guilt. The appellant informed the complainant that he had sent his wife Hansaben to Ghogha and that he was also to follow her. This false explanation reflects a guilty mind. Mr. Jani submitted that after taking his meals at his in-laws' house, he leaves by saying that he is also going to Ghogha but then he does not go there and next morning, the dead body is detected. The accused appellant came to be arrested four days thereafter. No explanation is coming from the appellant as to what was he doing for these four days. Mr. Jani submitted that ordinarily an innocent person's conduct would be to inquire about his wife, if she had not reached Ghogha if he had gone to Gogha but that has not been done. On the contrary, according to Mr. Jani, it appears from cross-examination of Alooben that there must be some dispute or suspicion about the fidelity of the deceased Hansaben to the appellant. However, the complainant Alooben says no to this aspect which reflects that Alooben is out to state the truth and not out to falsely implicate the appellant. Mr. Jani, therefore, submitted that the appeal may be dismissed.

5. The record and proceedings of the case are before us and we have given a close scrutiny to the record and proceedings in light of the contentions raised before us.

6. There is no dispute about the fact that the deceased Hansaben died an unnatural death. The injuries, as indicated by the medical evidence, are on the neck and the doctor's evidence says that the cause of death is due to throttling (manual strangulation). This aspect is not challenged by the appellant.

7. Now comes the question whether it was the appellant who caused the fatal injuries to the deceased. In this regard, as rightly pointed out by the learned advocate for the appellant, there is no direct evidence. But the evidence of complainant Alooben Karsanbhai (Exh.11) indicates that the appellant alongwith his wife Hansaben had gone to the house of this witness at about 8.00 a.m. and then they had gone away. Thereafter, the appellant went alone to the house of this witness for having lunch and informed, on enquiry, that he has sent

Hansa to Ghogha. He took his meals, rested for a while and left the house saying that he also is going to Ghogha and would return at night or next morning. Since nobody returned, Alooben went to the house of her daughter next morning and found that a foul smell was coming. She went to her brother Harjibhai and they saw legs of the dead body from the window. Therefore, she went to the police and lodged the complaint (Exh.12). This witness is cross-examined and she states that she had not learnt about any dispute between Hansa and the appellant. She denies suggestions that Hansa had illicit relation with one Bharat Pandya as a result of which Ramesh, son of the witness had caused injuries and had sprayed kerosene and he was, therefore, prosecuted for an attempt to commit murder.

8. The witness Rameshbhai Premjibhai, son of the complainant and brother of the deceased Hansa is examined at Exh.13 who also says the same thing as Alooben in substance. His cross-examination also does not reveal anything to help the accused except that a contradiction about time is brought on record. The contradiction is regarding time of arrival of the appellant for having his meals at the house of Alooben. Barring this, there is no contradiction. To this witness also, the question about relations of Bai Hansa with Bhraratbhai was put, which has been denied.

9. Prosecution witnesses Devjibhai Ghudabhai (Exh.14), Mahmadbhai Daoodbhai (Exh.24) and Balwantbhai Pragjibhai (Exh.26) are witnesses who have not supported the prosecution case and are declared hostile.

10. Witness Arvind Kalubhai Patel (Exh.23) runs a paan-bidi stall. He says that he knows the accused and he had last seen him on 16th August, 1988 at about 12.30 p.m. During cross-examination, he states that he receives about 200-250 customers in a day. He expresses his inability to give names of 25 customers received by him in the last five days. This witness is examined only to indicate that the appellant was last seen in Bhavnagar on 16th August, 1988 at about 12.30 p.m. Witness Punjabhai Bhagwanbhai (Exh.29) says that he was a Panch to the panchnama of inquest as well as the place of incident. He says that he was summoned by the police alongwith another Panch Vinod and a lady Panch. The lock was broken open at the behest of the police and they noticed the dead body of a lady. Inquest panchnama was prepared. A suggestion was put to him that the lock was not broken open by him, which he denied.

11. Investigating Officer Krishna Atmaram Patil is examined at Exh.27. He speaks of receiving the complaint, having gone to the house, having broken open the lock and having drawn inquest panchnama as well as panchnama of the place of offence. He says that the appellant could be apprehended on 20th August, 1988 and a panchnama in this regard was drawn. At that time, the appellant was found in possession of a key which was applicable to the lock of the house.

12. Having considered these evidences, we find that no error is committed by the learned Additional Sessions Judge in accepting the prosecution's case and convicting the appellant. It is a matter on record that the appellant and his wife were staying in the house wherefrom the dead body of the deceased was found. It is also a matter on record that on the date of the incident, the appellant went to the house of the complainant for taking lunch and at that time, he informed that he had sent his wife Hansa to Ghogha which, in fact, was not correct. Thereafter, he left the house saying that he is also going to Ghogha and thereafter, he is not traced for four days. If he had really gone to Ghogha and had found that Hansaben had not reached Ghogha, ordinarily his conduct would be to search for Bai Hansa, which he has not done. Further, when he is apprehended, he is found to be in possession of the key to the lock which was applied to the house wherefrom the dead body was found. A contention is raised that the evidence is not sufficient since the Panch witness says that the lock was broken. If we look at the evidence (Exh.25), the inquest panchnama indicates that the key seized from the appellant was applicable to the lock of the house.

13. It is also very important to note that only the appellant and his wife deceased Hansaben were staying in the house. The house was locked from outside and the dead body of Hansaben was found from inside the house and the key was found from the possession of the appellant. These aspects complete the chain of circumstances establishing the guilt of the accused.

14. It was urged that if the appellant had throttled the deceased, there would have been some scuffle, some noise, some uproar which would have attracted the attention of the neighbours and non-examination of the neighbours, therefore, may be considered as fatal to the prosecution case. There is no substance in this contention for the reason that even if the appellant had not committed this crime and somebody else had committed the crime, the neighbours would have noticed if they were

to notice and non-examination of the witnesses will not wipe out the strong circumstances indicated above to connect the appellant with the crime.

15. We find a ring of truth in the deposition of the complainant Alooben. She frankly admits that she had not heard of any dispute between the appellant and the deceased. But that does not advance the cause of the appellant any more. On the contrary, if she was out to implicate the appellant falsely, she could have very well said that there were disputes between the appellant and his wife Hansa. Therefore, there is no reason to disbelieve her version that the appellant had gone to her house and had falsely stated that he has sent Hansa to Ghogha.

16. In our opinion, therefore, there is no reason to interfere with the finding of the Trial Court. The conviction is rightly recorded on the evidence led by the prosecution. The appeal, therefore, must fail and the same is, therefore, dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

hki